

100TH CONGRESS
1ST SESSION

H. R. 1444

To amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions relating to those programs.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 1987

Received; read twice and referred to the Committee on Finance

JULY 23 (legislative day, JUNE 23), 1987

Committee discharged

AN ACT

To amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions relating to those programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF
2 CONTENTS.

3 (a) SHORT TITLE.—This Act may be cited as the
4 “Medicare and Medicaid Patient and Program Protection Act
5 of 1987”.

6 (b) AMENDMENTS TO THE SOCIAL SECURITY ACT.—
7 Except as otherwise specifically provided, whenever in this
8 Act an amendment is expressed in terms of an amendment to
9 or repeal of, a section or other provision, the reference shall
10 be considered to be made to that section or other provision of
11 the Social Security Act.

12 (c) TABLE OF CONTENTS.—The table of contents of
13 this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Exclusion from medicare and State health care programs.
- Sec. 3. Civil monetary penalties.
- Sec. 4. Criminal penalties for acts involving medicare and State health care programs.
- Sec. 5. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.
- Sec. 6. Obligation of health care practitioners and providers.
- Sec. 7. Exclusion under the medicaid program.
- Sec. 8. Miscellaneous and conforming amendments.
- Sec. 9. Clarification of medicaid moratorium provisions of Deficit Reduction Act of 1984.
- Sec. 10. Limitation of liability of medicare beneficiaries with respect to services furnished by excluded individuals and entities.
- Sec. 11. Definition of person with ownership or control interest.
- Sec. 12. Conditional approval of renal dialysis facilities.
- Sec. 13. Amendment relating to fraud involving medicare supplemental insurance.
- Sec. 14. Standards for anti-kickback provisions.
- Sec. 15. Effective dates.

1 SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH
2 CARE PROGRAMS.

3 Section 1128 (42 U.S.C. 1320a-7) is amended to read
4 as follows:

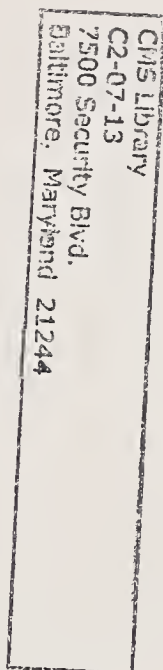
5 "EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES
6 FROM PARTICIPATION IN MEDICARE AND STATE
7 HEALTH CARE PROGRAMS

8 "SEC. 1128. (a) MANDATORY EXCLUSION.—The Sec-
9 retary shall exclude the following individuals and entities
10 from participation in any program under title XVIII and
11 shall direct that the following individuals and entities be ex-
12 cluded from participation in any State health care program
13 (as defined in subsection (h)):

14 "(1) CONVICTION OF PROGRAM-RELATED
15 CRIMES.—Any individual or entity that has been con-
16 victed of a criminal offense related to the delivery of an
17 item or service under title XVIII or under any State
18 health care program.

19 "(2) CONVICTION RELATING TO PATIENT
20 ABUSE.—Any individual or entity that has been con-
21 victed, under Federal or State law, of a criminal of-
22 fense relating to neglect or abuse of patients in connec-
23 tion with the delivery of a health care item or service.

24 "(b) PERMISSIVE EXCLUSION.—The Secretary may ex-
25 clude the following individuals and entities from participation
26 in any program under title XVIII and may direct that the



1 following individuals and entities be excluded from participa-
2 tion in any State health care program:

3 “(1) CONVICTION RELATING TO FRAUD.—Any
4 individual or entity that has been convicted, under
5 Federal or State law, in connection with the delivery
6 of a health care item or service or with respect to any
7 act or omission in a program operated by or financed
8 in whole or in part by any Federal, State, or local gov-
9 ernment agency, of a criminal offense relating to fraud,
10 theft, embezzlement, breach of fiduciary responsibility,
11 or other financial misconduct.

12 “(2) CONVICTION RELATING TO OBSTRUCTION
13 OF AN INVESTIGATION.—Any individual or entity that
14 has been convicted, under Federal or State law, in
15 connection with the interference with or obstruction of
16 any investigation into any criminal offense described in
17 paragraph (1) or in subsection (a).

18 “(3) CONVICTION RELATING TO CONTROLLED
19 SUBSTANCE.—Any individual or entity that has been
20 convicted, under Federal or State law, of a criminal of-
21 fense relating to the unlawful manufacture, distribution,
22 prescription, or dispensing of a controlled substance.

23 “(4) LICENSE REVOCATION OR SUSPENSION.—
24 Any individual or entity—

1 “(A) whose license to provide health care
2 has been revoked or suspended by any State li-
3 censing authority, or who otherwise lost such a li-
4 cense, for reasons bearing on the individual’s or
5 entity’s professional competence, professional per-
6 formance, or financial integrity, or

7 “(B) who surrendered such a license while a
8 formal disciplinary proceeding was pending before
9 such an authority and the proceeding concerned
10 the individual’s or entity’s professional compe-
11 tence, professional performance, or financial
12 integrity.

13 “(5) EXCLUSION OR SUSPENSION UNDER FEDER-
14 AL OR STATE HEALTH CARE PROGRAM.—Any indi-
15 vidual or entity which has been suspended or excluded
16 from participation, or otherwise sanctioned, under—

17 “(A) any Federal program, including pro-
18 grams of the Department of Defense or the Veter-
19 ans’ Administration, involving the provision of
20 health care, or

21 “(B) a State health care program,
22 for reasons bearing on the individual’s or entity’s pro-
23 fessional competence, professional performance, or
24 financial integrity.

1 “(6) CLAIMS FOR EXCESSIVE CHARGES OR UN-
2 NECESSARY SERVICES AND FAILURE OF CERTAIN OR-
3 GANIZATIONS TO FURNISH MEDICALLY NECESSARY
4 SERVICES.—Any individual or entity that the Secre-
5 tary determines—

6 “(A) has submitted or caused to be submitted
7 bills or requests for payment (where such bills or
8 requests are based on charges or cost) under title
9 XVIII or a State health care program containing
10 charges (or, in applicable cases, requests for pay-
11 ment of costs) for items or services furnished sub-
12 stantially in excess of such individual’s or entity’s
13 usual charges (or, in applicable cases, substantial-
14 ly in excess of such individual’s or entity’s costs)
15 for such items or services, unless the Secretary
16 finds there is good cause for such bills or requests
17 containing such charges or costs;

18 “(B) has furnished or caused to be furnished
19 items or services to patients (whether or not eligi-
20 ble for benefits under title XVIII or under a State
21 health care program) substantially in excess of the
22 needs of such patients or of a quality which fails
23 to meet professionally recognized standards of
24 health care;

25 “(C) is—

“(i) a health maintenance organization
(as defined in section 1903(m)) providing
items and services under a State plan ap-
proved under title XIX, or

“(ii) an entity furnishing services under
a waiver approved under section 1915(b)(1),
and has failed substantially to provide medically
necessary items and services that are required
(under law or the contract with the State under
title XIX) to be provided to individuals covered
under that plan or waiver, if the failure has ad-
versely affected (or has a substantial likelihood of
adversely affecting) these individuals; or

“(D) is an entity providing items and serv-
ices as an eligible organization under a risk-shar-
ing contract under section 1876 and has failed
substantially to provide medically necessary items
and services that are required (under law or such
contract) to be provided to individuals covered
under the risk-sharing contract, if the failure has
adversely affected (or has a substantial likelihood
of adversely affecting) these individuals.

“(7) FRAUD, KICKBACKS, AND OTHER PROHIBIT-
ED ACTIVITIES.—Any individual or entity that the

1 Secretary determines has committed an act which is
2 described in section 1128A or section 1128B.

3 “(8) ENTITIES CONTROLLED BY A SANCTIONED
4 INDIVIDUAL.—Any entity with respect to which the
5 Secretary determines that a person—

6 “(A)(i) with an ownership or control interest
7 (as defined in section 1124(a)(3)) in that entity, or

8 “(ii) who is an officer, director, agent, or
9 managing employee (as defined in section 1126(b))
10 of that entity—

11 is a person—

12 “(B)(i) who has been convicted of any offense
13 described in subsection (a) or in paragraph (1), (2),
14 or (3) of this subsection;

15 “(ii) against whom a civil monetary penalty
16 has been assessed under section 1128A; or

17 “(iii) who has been excluded from participa-
18 tion under a program under title XVIII or under
19 a State health care program.

20 “(9) FAILURE TO DISCLOSE REQUIRED INFORMA-
21 TION.—Any entity that did not fully and accurately
22 make any disclosure required by section 1124 or sec-
23 tion 1126.

24 “(10) FAILURE TO SUPPLY REQUESTED INFOR-
25 MATION ON SUBCONTRACTORS AND SUPPLIERS.—Any

disclosing entity (as defined in section 1124(a)(2)) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

“(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of \$25,000, or

“(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

“(11) FAILURE TO SUPPLY PAYMENT INFORMATION.—Any individual or entity furnishing items or services for which payment may be made under title XVIII or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether

1 such payments are or were due and the amounts there-
2 of, or has refused to permit such examination of its
3 records by or on behalf of the Secretary or that agency
4 as may be necessary to verify such information.

5 “(12) FAILURE TO GRANT IMMEDIATE
6 ACCESS.—Any individual or entity that fails to grant
7 immediate access, upon reasonable request (as defined
8 by the Secretary in regulations) to any of the
9 following:

10 “(A) To the Secretary, or to the agency used
11 by the Secretary, for the purpose specified in the
12 first sentence of section 1864(a) (relating to com-
13 pliance with conditions of participation or pay-
14 ment).

15 “(B) To the Secretary or the State agency,
16 to perform the reviews and surveys required
17 under State plans under paragraphs (26), (31),
18 and (33) of section 1902(a) and under section
19 1903(g).

20 “(C) To the Inspector General of the De-
21 partment of Health and Human Services, for the
22 purpose of reviewing records, documents, and
23 other data necessary to the performance of the
24 statutory functions of the Inspector General.

1 “(D) To a State medicaid fraud control unit
2 (as defined in section 1903(q)), for the purpose of
3 conducting activities described in that section.

4 “(13) FAILURE TO TAKE CORRECTIVE
5 ACTION.—Any hospital that fails to comply substan-
6 tially with a corrective action required under section
7 1886(f)(2)(B).

8 “(14) DEFAULT ON HEALTH EDUCATION LOAN
9 OR SCHOLARSHIP OBLIGATIONS.—Any individual who
10 the Secretary determines is in default on repayments of
11 scholarship obligations or loans in connection with
12 health professions education made or secured, in whole
13 or in part, by the Secretary and with respect to whom
14 the Secretary has taken all reasonable steps available
15 to the Secretary to secure repayment of such obliga-
16 tions or loans, except that (A) the Secretary shall not
17 exclude pursuant to this paragraph a physician who is
18 the sole community physician or sole source of essen-
19 tial specialized services in a community if a State re-
20 quests that the physician not be excluded, and (B) the
21 Secretary shall take into account, in determining
22 whether to exclude any other physician pursuant to
23 this paragraph, access of beneficiaries to physician
24 services for which payment may be made under title
25 XVIII or XIX.

1 “(c) NOTICE, EFFECTIVE DATE, AND PERIOD OF EX-
2 CLUSION.—(1) An exclusion under this section or under sec-
3 tion 1128A shall be effective at such time and upon such
4 reasonable notice to the public and to the individual or entity
5 excluded as may be specified in regulations consistent with
6 paragraph (2).

7 “(2)(A) Except as provided in subparagraph (B), such an
8 exclusion shall be effective with respect to services furnished
9 to an individual on or after the effective date of the exclusion.

10 “(B) Unless the Secretary determines that the health
11 and safety of individuals receiving services warrants the ex-
12 clusion taking effect earlier, an exclusion shall not apply to
13 payments made under title XVIII or under a State health
14 care program for—

15 “(i) inpatient institutional services furnished to an
16 individual who was admitted to such institution before
17 the date of the exclusion, or

18 “(ii) home health services and hospice care fur-
19 nished to an individual under a plan of care established
20 before the date of the exclusion,

21 until the passage of 30 days after the effective date of the
22 exclusion.

23 “(3)(A) The Secretary shall specify, in the notice of ex-
24 clusion under paragraph (1) and the written notice under sec-
25 tion 1128A, the minimum period (or, in the case of an exclu-

1 sion of an individual under subsection (b)(12), the period) of
2 the exclusion.

3 “(B) In the case of an exclusion under subsection (a),
4 the minimum period of exclusion shall be not less than five
5 years, except that, upon the request of a State, the Secretary
6 may waive the exclusion under subsection (a)(1) in the case of
7 an individual or entity that is the sole community physician
8 or sole source of essential specialized services in a communi-
9 ty. The Secretary’s decision whether to waive the exclusion
10 shall not be reviewable.

11 “(C) In the case of an exclusion of an individual under
12 subsection (b)(12), the period of the exclusion shall be equal
13 to the sum of—

14 “(i) the length of the period in which the individ-
15 ual failed to grant the immediate access described in
16 that subsection, and

17 “(ii) an additional period, not to exceed 90 days,
18 set by the Secretary.

19 “(d) NOTICE TO STATE AGENCIES AND EXCLUSION
20 UNDER STATE HEALTH CARE PROGRAMS.—(1) Subject to
21 paragraph (3), the Secretary shall exercise the authority
22 under subsection (b) in a manner that results in an individ-
23 ual’s or entity’s exclusion from all the programs under title
24 XVIII and all the State health care programs in which the
25 individual or entity may otherwise participate.

1 “(2) The Secretary shall promptly notify each appropri-
2 ate State agency administering or supervising the administra-
3 tion of each State health care program (and, in the case of an
4 exclusion effected pursuant to subsection (a) and to which
5 section 304(a)(5) of the Controlled Substances Act may
6 apply, the Attorney General)—

7 “(A) of the fact and circumstances of each exclu-
8 sion effected against an individual or entity under this
9 section or section 1128A, and

10 “(B) of the period (described in paragraph (3)) for
11 which the State agency is directed to exclude the indi-
12 vidual or entity from participation in the State health
13 care program.

14 “(3)(A) Except as provided in subparagraph (B), the
15 period of the exclusion under a State health care program
16 under paragraph (2) shall be the same as any period of exclu-
17 sion under a program under title XVIII.

18 “(B) The Secretary may waive an individual’s or enti-
19 ty’s exclusion under a State health care program under para-
20 graph (2) if the Secretary receives and approves a request for
21 the waiver with respect to the individual or entity from the
22 State agency administering or supervising the administration
23 of the program.

24 “(e) NOTICE TO STATE LICENSING AGENCIES.—The
25 Secretary shall—

1 “(1) promptly notify the appropriate State or local
2 agency or authority having responsibility for the licens-
3 ing or certification of an individual or entity excluded
4 (or directed to be excluded) from participation under
5 this section or section 1128A, of the fact and circum-
6 stances of the exclusion,

7 “(2) request that appropriate investigations be
8 made and sanctions invoked in accordance with appli-
9 cable State law and policy, and

10 “(3) request that the State or local agency or au-
11 thority keep the Secretary and the Inspector General
12 of the Department of Health and Human Services fully
13 and currently informed with respect to any actions
14 taken in response to the request.

15 “(f) NOTICE, HEARING, AND JUDICIAL REVIEW.—(1)
16 Any individual or entity that is excluded (or directed to be
17 excluded) from participation under this section is entitled to
18 reasonable notice and opportunity for a hearing thereon by
19 the Secretary to the same extent as is provided in section
20 205(b), and to judicial review of the Secretary’s final decision
21 after such hearing as is provided in section 205(g).

22 “(2) The provisions of section 205(h) shall apply with
23 respect to this section and sections 1128A and 1156 to the
24 same extent as it is applicable with respect to title II.

1 “(g) APPLICATION FOR TERMINATION OF EXCLU-
2 SION.—(1) An individual or entity excluded (or directed to be
3 excluded) from participation under this section or section
4 1128A may apply to the Secretary, in the manner specified
5 by the Secretary in regulations and at the end of the mini-
6 mum period of exclusion provided under subsection (c)(3) and
7 at such other times as the Secretary may provide, for termi-
8 nation of the exclusion effected under this section or section
9 1128A.

10 “(2) The Secretary may terminate the exclusion if the
11 Secretary determines, on the basis of the conduct of the ap-
12 plicant which occurred after the date of the notice of exclu-
13 sion or which was unknown to the Secretary at the time of
14 the exclusion, that—

15 “(A) there is no basis under subsection (a) or (b)
16 or section 1128A(a) for a continuation of the exclusion,
17 and

18 “(B) there are reasonable assurances that the
19 types of actions which formed the basis for the original
20 exclusion have not recurred and will not recur.

21 “(3) The Secretary shall promptly notify each appropri-
22 ate State agency administering or supervising the administra-
23 tion of each State health care program (and, in the case of an
24 exclusion effected pursuant to subsection (a) and to which
25 section 304(a)(5) of the Controlled Substances Act may

1 apply, the Attorney General) of the fact and circumstances of
2 each termination of exclusion made under this subsection.

3 “(h) DEFINITION OF STATE HEALTH CARE PRO-
4 GRAM.—For purposes of this section and sections 1128A and
5 1128B, the term ‘State health care program’ means—

6 “(1) a State plan approved under title XIX,

7 “(2) any program receiving funds under title V or
8 from an allotment to a State under such title, or

9 “(3) any program receiving funds under title XX
10 or from an allotment to a State under such title.

11 “(i) CONVICTED DEFINED.—For purposes of subsec-
12 tions (a) and (b), a physician or other individual is considered
13 to have been ‘convicted’ of a criminal offense—

14 “(1) when a judgment of conviction has been en-
15 tered against the physician or individual by a Federal,
16 State, or local court, regardless of whether there is an
17 appeal pending or whether the judgment of conviction
18 or other record relating to criminal conduct has been
19 expunged;

20 “(2) when there has been a finding of guilt
21 against the physician or individual by a Federal, State,
22 or local court;

23 “(3) when a plea of guilty or nolo contendere by
24 the physician or individual has been accepted by a
25 Federal, State, or local court; or

1 “(4) when the physician or individual has entered
2 into participation in a first offender or other program
3 where judgment of conviction has been withheld.”.

4 **SEC. 3. CIVIL MONETARY PENALTIES.**

5 (a) **GROUND FOR IMPOSITION.**—(1) Section
6 1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1)) is amended by
7 striking “the Secretary determines” and all that follows
8 through “; or” and inserting “the Secretary determines—

9 “(A) is for a medical or other item or service
10 that the person knows or has reason to know was
11 not provided as claimed,

12 “(B) is for a medical or other item or service
13 and the person knows or has reason to know the
14 claim is false or fraudulent,

15 “(C) is presented for a physician’s service (or
16 an item or service incident to a physician’s serv-
17 ice) by a person who knows or has reason to
18 know that the individual who furnished (or super-
19 vised the furnishing of) the service—

20 “(i) was not licensed as a physician,

21 “(ii) was licensed as a physician, but
22 such license had been obtained through a
23 misrepresentation of material fact (including
24 cheating on an examination required for li-
25 censing), or

1 “(iii) represented to the patient at the
2 time the service was furnished that the phy-
3 sician was certified in a medical specialty by
4 a medical specialty board when the individ-
5 ual was not so certified, or

6 “(D) is for a medical or other item or service
7 furnished during a period in which the person was
8 excluded under the program under which the
9 claim was made pursuant to a determination by
10 the Secretary under this section or under section
11 1128, 1156, 1160(b) (as in effect on September 2,
12 1982), 1862(d) (as in effect on the date of the en-
13 actment of the Medicare and Medicaid Patient and
14 Program Protection Act of 1987), or 1866(b);
15 or”.

16 (2) Section 1128A(a)(2) is amended—

17 (A) in subparagraph (B) by inserting “(or other re-
18 quirement of a State plan under title XIX)” after
19 “State agency”, and

20 (B) by inserting at the end “or (D) an agreement
21 pursuant to section 1866(a)(1)(G), or”.

22 (3) Subsection (a) of section 1128A is further
23 amended—

1 (A) by inserting after paragraph (2) and before the
2 end matter of such subsection the following new
3 paragraph:

4 “(3) gives to any person, with respect to coverage
5 under title XVIII of inpatient hospital services subject
6 to the provisions of section 1886, information that he
7 knows or has reason to know is false or misleading,
8 and that could reasonably be expected to influence the
9 decision when to discharge such person or another in-
10 dividual from the hospital;”, and

11 (B) in the matter following paragraph (3)—

12 (i) by inserting “(or, in cases under para-
13 graph (3), \$15,000 for each individual with re-
14 spect to whom false or misleading information
15 was given)” before the period at the end of the
16 first sentence, and

17 (ii) by adding at the end thereof the following
18 new sentence: “In addition the Secretary may
19 make a determination in the same proceeding to
20 exclude the person from participation in the pro-
21 grams under title XVIII and to direct the appro-
22 priate State agency to exclude the person from
23 participation in any State health care program.”.

24 (b) STATUTE OF LIMITATION ON ACTIONS.—Subsec-
25 tion (c)(1) of section 1128A (as redesignated by section

1 9313(c)(1)(D) of the Omnibus Budget Reconciliation Act of
2 1986) is amended by adding at the end the following new
3 sentences: “The Secretary may not initiate an action under
4 this section with respect to any claim later than six years
5 after the date the claim was presented. The Secretary may
6 initiate an action under this section by serving notice of the
7 action in any manner authorized by rule 4 of the Federal
8 Rules of Civil Procedure.”.

9 (c) CONFORMING AMENDMENT.—Subsections (c), (d),
10 (g), and (h) of section 1128A are each amended by striking
11 “penalty or assessment” and inserting “penalty, assessment,
12 or exclusion” each place it appears.

13 (d) PRO-RATED PAYMENT OF RECOVERIES TO STATE
14 AGENCIES.—Subsection (f)(1)(A) of section 1128A is amend-
15 ed by striking “equal to the State’s share of the amount paid
16 by the State agency” and inserting “bearing the same pro-
17 portion to the total amount recovered as the State’s share of
18 the amount paid by the State agency for such claim bears to
19 the total amount paid”.

20 (e) NOTICE TO STATE AGENCIES.—Subsection (h) of
21 section 1128A is further amended by inserting “the appropri-
22 ate State agency or agencies administering or supervising the
23 administration of State health care programs (as defined in
24 section 1128(h)),” after “professional organization,”.

1 (f) APPLICATION OF SUBPOENA POWER AND INJUNC-
2 TIVE POWERS.—Section 1128A is further amended by
3 adding at the end the following new subsections:

4 “(j) The provisions of subsections (d) and (e) of section
5 205 shall apply with respect to this section to the same
6 extent as they are applicable with respect to title II. The
7 Secretary may delegate the authority granted by section
8 205(d) (as made applicable to this section) to the Inspector
9 General of the Department of Health and Human Services
10 for purposes of any investigation under this section.

11 “(k) Whenever the Secretary has reason to believe that
12 any person has engaged, is engaging, or is about to engage in
13 any activity which makes the person subject to a civil mone-
14 tary penalty under this section, the Secretary may bring an
15 action in an appropriate district court of the United States
16 (or, if applicable, a United States court of any territory) to
17 enjoin such activity, or to enjoin the person from concealing,
18 removing, encumbering, or disposing of assets which may be
19 required in order to pay a civil monetary penalty if any such
20 penalty were to be imposed or to seek other appropriate
21 relief.”.

22 SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDI-
23 CARE AND STATE HEALTH CARE PROGRAMS.

24 (a) TECHNICAL AMENDMENTS.—Section 1909 (42
25 U.S.C. 1396h) is amended—

1 (1) by amending the heading to read as follows:

2 “CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE

3 OR STATE HEALTH CARE PROGRAMS”;

4 (2) in subsection (a)(1), by striking “a State plan
5 approved under this title” and inserting “a program
6 under title XVIII or a State health care program (as
7 defined in section 1128(h))”;

8 (3) in the matter in subsection (a) following para-
9 graph (4), by striking “this title” the first place it ap-
10 pears and inserting “the program”;

11 (4) in the last sentence of subsection (a), by strik-
12 ing “this title” the first place it appears and inserting
13 “title XIX”, and by striking “this title” the second
14 place it appears and inserting “that title”;

15 (5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and
16 (3)(A) of subsection (b), by striking “this title” and in-
17 serting “title XVIII or a State health care program”
18 each place it appears;

19 (6) in subsection (b)(3)—

20 (A) by striking “and” at the end of subpara-
21 graph (A),

22 (B) by striking the period at the end of sub-
23 paragraph (B) and inserting “; and”, and

24 (C) by adding at the end the following:

25 “(C) any amount paid by a vendor of goods or
26 services to a person authorized to act as a purchasing

1 agent for a group of individuals or entities who are fur-
2 nishing services reimbursed under title XVIII or a
3 State health care program if—

4 “(i) the person has a written contract, with
5 each such individual or entity, which specifies the
6 amount to be paid the person, which amount may
7 be a fixed amount or a fixed percentage of the
8 value of the purchases made by each such individ-
9 ual or entity under the contract, and

10 “(ii) in the case of an entity that is a provid-
11 er of services (as defined in section 1861(u)), the
12 person discloses (in such form and manner as the
13 Secretary requires) to the entity and, upon re-
14 quest, to the Secretary the amount received from
15 each such vendor with respect to purchases made
16 by or on behalf of the entity.”;

17 (7) in subsection (c), by striking “or home health
18 agency (as those terms are employed in this title)” and
19 inserting “home health agency, or other entity for
20 which certification is required under title XVIII or a
21 State health care program”; and

22 (8) in subsection (d), by striking “this title” and
23 inserting “title XIX” each place it appears.

1 (b) CRIMINAL PENALTIES FOR PHYSICIAN MISREPRE-
2 SENTATIONS.—Subsection (a) of such section is further
3 amended—

4 (1) by striking “or” at the end of paragraph (3),

5 (2) by inserting “or” at the end of paragraph (4),

6 and

7 (3) by inserting after paragraph (4) the following
8 new paragraph:

9 “(5) presents or causes to be presented a claim for
10 a physician’s service for which payment may be made
11 under a program under title XVIII or a State health
12 care program and knows that the individual who fur-
13 nished the service was not licensed as a physician,”.

14 (c) REDESIGNATION OF SECTION 1877(d) AS SECTION
15 1128B(e).—Subsection (d) of section 1877 (42 U.S.C.
16 1395nn) is redesignated as subsection (e) and is transferred
17 and inserted in section 1909 at the end thereof.

18 (d) REDESIGNATION OF SECTION 1909 AS SECTION
19 1128B.—Section 1909, as amended by subsections (a), (b),
20 and (c) of this section, is redesignated as section 1128B and
21 is transferred to title XI and inserted immediately after sec-
22 tion 1128A.

23 (e) REPEAL.—Section 1877 (other than subsection (d)
24 thereof which was transferred under subsection (c) of this sec-
25 tion) is repealed.

1 SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY
2 STATE LICENSING AUTHORITIES AGAINST
3 HEALTH CARE PRACTITIONERS AND PRO-
4 VIDERS.

5 (a) MEDICAID PLAN REQUIREMENT.—Section 1902(a)
6 (42 U.S.C. 1396a(a)) is amended—

7 (1) by striking “and” at the end of paragraph
8 (46),

9 (2) by striking the period at the end of the para-
10 graph (47) added by section 9407(a) of the Omnibus
11 Budget Reconciliation Act of 1986 and inserting a
12 semicolon and transferring and inserting such para-
13 graph after paragraph (46),

14 (3) by striking the period at the end of the para-
15 graph (47) added by section 11005(b) of the Anti-Drug
16 Abuse Act of 1986 and inserting “; and”, by redesign-
17 ating such paragraph as paragraph (48), and by trans-
18 ferring and inserting such paragraph after paragraph
19 (47), and

20 (4) by inserting after paragraph (48) the following
21 new paragraph:

22 “(49) provide that the State will provide informa-
23 tion and access to certain information respecting sanc-
24 tions taken against health care practitioners and pro-
25 viders by State licensing authorities in accordance with
26 section 1921.”.

1 (b) INFORMATION REQUIRED.—Title XIX is amended
2 by redesignating section 1921 as section 1922 and inserting
3 after section 1920 the following new section:

4 “INFORMATION CONCERNING SANCTIONS TAKEN BY STATE
5 LICENSING AUTHORITIES AGAINST HEALTH CARE
6 PRACTITIONERS AND PROVIDERS

7 “SEC. 1921. (a) INFORMATION REPORTING REQUIRE-
8 MENT.—The requirement referred to in section 1902(a)(49) is
9 that the State must provide for the following:

10 “(1) INFORMATION REPORTING SYSTEM.—The
11 State must have in effect a system of reporting the fol-
12 lowing information with respect to formal proceedings
13 (as defined by the Secretary in regulations) concluded
14 against a health care practitioner or entity by any au-
15 thority of the State (or of a political subdivision there-
16 of) responsible for the licensing of health care practi-
17 tioners or entities:

18 “(A) Any adverse action taken by such li-
19 censing authority as a result of the proceeding, in-
20 cluding any revocation or suspension of a license
21 (and the length of any such suspension), reprimand, censure, or probation.

22 “(B) Any dismissal or closure of the proceed-
23 ings by reason of the practitioner or entity surren-
24 dering the license or leaving the State or
25 jurisdiction.
26

1 “(C) Any other loss of the license of the
2 practitioner or entity, whether by operation of
3 law, voluntary surrender, or otherwise.

4 “(2) ACCESS TO DOCUMENTS.—The State must
5 provide the Secretary (or an entity designated by the
6 Secretary) with access to such documents of the au-
7 thority described in paragraph (1) as may be necessary
8 for the Secretary to determine the facts and circum-
9 stances concerning the actions and determinations de-
10 scribed in such paragraph for the purpose of carrying
11 out this Act.

12 “(b) FORM OF INFORMATION.—The information de-
13 scribed in subsection (a)(1) shall be provided to the Secretary
14 (or to an appropriate private or public agency, under suitable
15 arrangements made by the Secretary with respect to receipt,
16 storage, protection of confidentiality, and dissemination of in-
17 formation) in such a form and manner as the Secretary deter-
18 mines to be appropriate in order to provide for activities of
19 the Secretary under this Act and in order to provide, directly
20 or through suitable arrangements made by the Secretary,
21 information—

22 “(1) to agencies administering Federal health care
23 programs,

24 “(2) to licensing authorities described in subsec-
25 tion (a)(1),

1 “(3) to State agencies administering or supervis-
2 ing the administration of State health care programs
3 (as defined in section 1128(h)),

4 “(4) to utilization and quality control peer review
5 organizations described in part B of title XI,

6 “(5) to State medicaid fraud control units (as de-
7 fined in section 1903(q)),

8 “(6) to hospitals and other health care entities (as
9 defined in section 431 of the Health Care Quality Im-
10 provement Act of 1986), with respect to physicians or
11 other licensed health care practitioners that have en-
12 tered (or may be entering) into an employment or affili-
13 ation relationship with, or have applied for clinical
14 privileges or appointments to the medical staff of, such
15 hospitals or other health care entities (and such infor-
16 mation shall be deemed to be disclosed pursuant to sec-
17 tion 427 of, and be subject to the provisions of, that
18 Act), and

19 “(7) to the Attorney General and such other law
20 enforcement officials as the Secretary deems appropri-
21 ate, and

22 “(8) upon request, to the Comptroller General,
23 in order for such authorities to determine the fitness of indi-
24 viduals to provide health care services, to protect the health
25 and safety of individuals receiving health care through such

1 programs, and to protect the fiscal integrity of such
2 programs.

3 “(c) CONFIDENTIALITY OF INFORMATION PROVID-
4 ED.—The Secretary shall provide for suitable safeguards for
5 the confidentiality of such of the information furnished under
6 subsection (a). Nothing in this subsection shall prevent the
7 disclosure of such information by a party which is otherwise
8 authorized, under applicable State law, to make such
9 disclosure.

10 “(d) APPROPRIATE COORDINATION.—The Secretary
11 shall provide for the maximum appropriate coordination in
12 the implementation of subsection (a) of this section and sec-
13 tion 422 of the Health Care Quality Improvement Act of
14 1986.”.

15 **SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**
16 **PROVIDERS.**

17 Section 1156 (42 U.S.C. 1320c-5) is amended—

18 (1) by striking “title XVIII” and “such title” in
19 subsection (a) and inserting “this Act” in each in-
20 stance, and

21 (2) by striking “title XVIII” in subsection (b) and
22 inserting “this Act” each place it appears.

23 **SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.**

24 Section 1902 (42 U.S.C. 1396b) is amended by redesignig-
25 nating the subsection (l) added by section 3(b) of the Employ-

1 ment Opportunities for Disabled Americans Act as subsection
2 (o) and by inserting after such subsection the following new
3 subsection:

4 “(p)(1) In addition to any other authority, a State may
5 exclude any individual or entity for purposes of participating
6 under the State plan under this title for any reason for which
7 the Secretary could exclude the individual or entity from par-
8 ticipation in a program under title XVIII under section
9 1128, 1128A, or 1866(b)(2).

10 “(2) In order for a State to receive payments for medi-
11 cal assistance under section 1903(a), with respect to pay-
12 ments the State makes to a health maintenance organization
13 (as defined in section 1903(m)) or to an entity furnishing
14 services under a waiver approved under section 1915(b)(1),
15 the State must provide that it will exclude from participation,
16 as such an organization or entity, any organization or entity
17 that—

18 “(A) could be excluded under section 1128(b)(8)
19 (relating to owners and managing employees who have
20 been convicted of certain crimes or received other
21 sanctions), or

22 “(B) has, directly or indirectly, a substantial con-
23 tractual relationship (as defined by the Secretary) with
24 an individual or entity that is described in section
25 1128(b)(8)(B).

1 “(3) As used in this subsection, the term ‘exclude’ in-
2 cludes the refusal to enter into or renew a participation
3 agreement or the termination of such an agreement.”.

4 **SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.**

5 (a) **MATERNAL AND CHILD HEALTH PROGRAM.**—Sec-
6 tion 504(b) (42 U.S.C. 704(b)) is amended—

7 (1) by striking “or” at the end of paragraph (4),

8 (2) by striking the period at the end of paragraph

9 (5) and inserting “; or”, and

10 (3) by adding at the end thereof the following new
11 paragraph:

12 “(6) payment for any item or service (other than
13 an emergency item or service) furnished—

14 “(A) by an individual or entity excluded from
15 participation in the program under this title pursu-
16 ant to section 1128 or section 1128A, or

17 “(B) at the medical direction or on the pre-
18 scription of a physician during the period when
19 the physician is excluded pursuant to section 1128
20 or section 1128A from participation in the pro-
21 gram under this title.”.

22 (b) **DISCLOSURE REQUIREMENTS.**—(1) Subsection (a)
23 of section 1126 (42 U.S.C. 1320a-5) is amended—

24 (A) in the first sentence, by striking “or other in-
25 stitution” and all that follows through the period at the

1 end and inserting “or other entity (other than an indi-
2 vidual practitioner or group of practitioners) shall be
3 required to disclose to the Secretary or to the appropri-
4 ate State agency the name of any person that is a
5 person described in subparagraphs (A) and (B) of sec-
6 tion 1128(b)(8).”, and

7 (B) in the second sentence, by striking “institu-
8 tion, organization, or agency” and inserting “entity”.

9 (2) Subsection (b) of such section is amended by striking
10 “institution, organization, or agency” and inserting “entity”
11 each place it appears.

12 (c) MEDICARE PAYMENTS.—(1) Section 1862 (42
13 U.S.C. 1395y) is amended—

14 (A) by striking subsection (d), and

15 (B) by amending subsection (e) to read as follows:

16 “(e) No payment may be made under this title with re-
17 spect to any item or service (other than an emergency item or
18 service) furnished—

19 “(1) by an individual or entity during the period
20 when such individual or entity is excluded pursuant to
21 section 1128 or section 1128A from participation in
22 the program under this title; or

23 “(2) at the medical direction or on the prescrip-
24 tion of a physician during the period when he is ex-
25 cluded pursuant to section 1128 or section 1128A from

1 participation in the program under this title and when
2 the person furnishing such item or service knew or had
3 reason to know of the exclusion (after a reasonable
4 time period after reasonable notice has been furnished
5 to the person).”.

6 (2) Section 1842(j) (42 U.S.C. 1395u(j)) is amended—

7 (A) in paragraph (2)—

8 (i) by amending subparagraph (A) to read as
9 follows:

10 “(A) excluding a physician from participation in
11 the programs under this title for a period not to exceed
12 5 years, in accordance with the procedures of subsec-
13 tions (c), (f), and (g) of section 1128, or”, and

14 (ii) by striking “barred from participation in
15 the program” in the second sentence and inserting
16 “excluded from participation in the programs”;
17 and

18 (B) by striking “bar” in paragraph (3)(A) and in-
19 serting “exclude”.

20 (3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is
21 amended by striking “paragraphs (2) and (3) of subsection
22 (d)” and inserting “subsections (c), (f), and (g) of section
23 1128”.

24 (4) Paragraph (3) of section 1886(f) (42 U.S.C.
25 1395ww(f)) is amended to read as follows:

1 “(3) The provisions of subsections (c) through (g) of sec-
2 tion 1128 shall apply to determinations made under para-
3 graph (2) in the same manner as they apply to exclusions
4 effected under section 1128(b)(13).”.

5 (d) TERMINATION OF PROVIDER AGREEMENTS UNDER
6 MEDICARE.—Section 1866 (42 U.S.C. 1395cc) is
7 amended—

8 (1) by striking paragraph (3) of subsection (a);

9 (2) by amending subsection (b) to read as follows:

10 “(b)(1) A provider of services may terminate an agree-
11 ment with the Secretary under this section at such time and
12 upon such notice to the Secretary and the public as may be
13 provided in regulations, except that notice of more than six
14 months shall not be required.

15 “(2) The Secretary may refuse to enter into an agree-
16 ment under this section or, upon such reasonable notice to
17 the provider and the public as may be specified in regula-
18 tions, may refuse to renew or may terminate such an agree-
19 ment after the Secretary—

20 “(A) has determined that the provider fails to
21 comply substantially with the provisions of the agree-
22 ment, with the provisions of this title and regulations
23 thereunder, or with a corrective action required under
24 section 1886(f)(2)(B),

1 “(B) has determined that the provider fails sub-
2 stantially to meet the applicable provisions of section
3 1861, or

4 “(C) has excluded the provider from participation
5 in a program under this title pursuant to section 1128
6 or section 1128A.

7 “(3) A termination of an agreement or a refusal to
8 renew an agreement under this subsection shall be effective
9 on the same date and in the same manner as an exclusion
10 from participation under the programs under this title be-
11 comes effective under section 1128(c).”;

12 (3) in paragraphs (1) and (3) of subsection (c), by
13 striking “an agreement filed under this title by a pro-
14 vider of services has been terminated by the Secre-
15 tary” and inserting “the Secretary has terminated or
16 has refused to renew an agreement under this title
17 with a provider of services”;

18 (4) by inserting “or nonrenewal” in subsection (c)
19 after “termination” each place it appears; and

20 (5) by adding at the end the following new sub-
21 section:

22 “(h)(1) Except as provided in paragraph (2), an institu-
23 tion or agency dissatisfied with a determination by the Secre-
24 tary that it is not a provider of services or with a determina-
25 tion described in subsection (b)(2) shall be entitled to a hear-

1 ing thereon by the Secretary (after reasonable notice) to the
2 same extent as is provided in section 205(b), and to judicial
3 review of the Secretary's final decision after such hearing as
4 is provided in section 205(g).

5 “(2) An institution or agency is not entitled to separate
6 notice and opportunity for a hearing under both section 1128
7 and this section with respect to a determination or determina-
8 tions based on the same underlying facts and issues.”.

9 (e) CONFORMING AMENDMENT.—Section 1869 (42
10 U.S.C. 1395ff) is amended by striking subsection (c).

11 (f) MEDICAID PLAN REVISIONS.—Section 1902(a) (42
12 U.S.C. 1396b(a)) is amended—

13 (1) in paragraph (23), by inserting “subsection (g)
14 and in” after “except as provided in”,

15 (2) in paragraph (38), by striking “respectively,
16 (A)” and all that follows up to the semicolon at the
17 end and inserting “the information described in section
18 1128(b)(9)”, and

19 (3) in paragraph (39)—

20 (A) by striking “bar” and inserting
21 “exclude”,

22 (B) by striking “person” and inserting “indi-
23 vidual or entity” each place it appears, and

24 (C) by inserting “or section 1128A” after
25 “section 1128”.

1 (g) DENIAL OF FEDERAL FINANCIAL PARTICIPATION
2 UNDER MEDICAID.—Paragraph (2) of section 1903(i) (42
3 U.S.C. 1396b(i)) is amended to read as follows:

4 “(2) with respect to any amount expended for an
5 item or service (other than an emergency item or serv-
6 ice) furnished—

7 “(A) under the plan by any individual or
8 entity during any period when the individual or
9 entity is excluded from participation in the State
10 plan under this title pursuant to section 1128 or
11 section 1128A, or

12 “(B) at the medical direction or on the pre-
13 scription of a physician, during the period when
14 such physician is excluded pursuant to section
15 1128 or section 1128A from participation in the
16 program under this title and when the person fur-
17 nishing such item or service knew or had reason
18 to know of the exclusion (after a reasonable time
19 period after reasonable notice has been furnished
20 to the person).”.

21 (h) MEDICAID CONFORMING AMENDMENTS.—(1) Sub-
22 section (n) of section 1903 (42 U.S.C. 1396b) is repealed.

23 (2) Paragraph (2) of section 1915(a) (42 U.S.C.
24 1396n(a)) is amended to read as follows:

“(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

“(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

“(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.”.

(i) TITLE XX.—Section 2005(a) (42 U.S.C. 1397d(a)) is amended—

(1) by striking “or” at the end of paragraph (7),

(2) by striking the period at the end of paragraph (8) and inserting “; or”, and

(3) by adding at the end thereof the following new paragraph:

“(9) for payment for any item or service (other than an emergency item or service) furnished—

1 “(A) by an individual or entity excluded from
2 participation in the program under this title pursu-
3 ant to section 1128 or section 1128A, or

4 “(B) at the direction or on the prescription of
5 a physician during the period when the physician
6 is excluded pursuant to section 1128 or section
7 1128A from participation in the program under
8 this title.”.

9 (j) DENIAL, REVOCATION, OR SUSPENSION OF REGIS-
10 TRATION TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A
11 CONTROLLED SUBSTANCE FOR ENTITIES EXCLUDED FROM
12 THE MEDICARE PROGRAM.—Section 304(a) of the Con-
13 trolled Substances Act (21 U.S.C. 824(a)) is amended—

14 (1) by striking “or” at the end of paragraph (3),

15 (2) by striking the period at the end of paragraph

16 (4) and inserting “; or”, and

17 (3) by inserting after paragraph (4) the following
18 new paragraph:

19 “(5) has been excluded (or directed to be ex-
20 cluded) from participation in a program pursuant to
21 section 1128(a) of the Social Security Act.”.

1 SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVI-
2 SIONS OF DEFICIT REDUCTION ACT OF 1984.

3 Section 2373(c) of the Deficit Reduction Act of 1984
4 (Public Law 98-369; 98 Stat. 1112) is amended to read as
5 follows:

6 “(c)(1) The Secretary of Health and Human Services
7 shall not take any compliance, disallowance, penalty, or other
8 regulatory action against a State with respect to the morato-
9 rium period described in paragraph (2) by reason of such
10 State’s plan described in paragraph (5) under title XIX of the
11 Social Security Act (including any part of the plan operating
12 pursuant to section 1902(f) of such Act), or the operation
13 thereunder, being determined to be in violation of clause (IV),
14 (V), or (VI) of section 1902(a)(10)(A)(ii) or section
15 1902(a)(10)(C)(i)(III) of such Act on account of such plan’s
16 (or its operation) having a standard or methodology which the
17 Secretary interprets as being less restrictive than the stand-
18 ard or methodology required under such section, provided
19 that such plan (or its operation) does not make ineligible any
20 individual who would be eligible but for the provisions of this
21 subsection.

22 “(2) The moratorium period is the period beginning on
23 October 1, 1981, and ending 18 months after the date on
24 which the Secretary submits the report required under para-
25 graph (3).

1 “(3) The Secretary shall report to the Congress within
2 12 months after the date of the enactment of this Act with
3 respect to the appropriateness, and impact on States and re-
4 cipients of medical assistance, of applying standards and
5 methodologies utilized in cash assistance programs to those
6 recipients of medical assistance who do not receive cash as-
7 sistance, and any recommendations for changes in such
8 requirements.

9 “(4) No provision of law shall repeal or suspend the
10 moratorium imposed by this subsection unless such provision
11 specifically amends or repeals this subsection.

12 “(5) In this subsection, a State plan is considered to
13 include—

14 “(A) any amendment or other change in the plan
15 which is submitted by a State, or

16 “(B) any policy or guideline delineated in the
17 Medicaid operation or program manuals of the State
18 which are submitted by the State to the Secretary,
19 whether before or after the date of enactment of this Act and
20 whether or not the amendment or change, or the operating or
21 program manual was approved, disapproved, acted upon, or
22 not acted upon by the Secretary.

23 “(6) During the moratorium period, the Secretary shall
24 implement (and shall not change by any administrative

1 action) the policy in effect at the beginning of such moratori-
 2 um period with respect to—

3 “(A) the point in time at which an institutional-
 4 ized individual must sell his home (in order that it not
 5 be counted as a resource); and

6 “(B) the time period allowed for sale of a home of
 7 any such individual,
 8 who is an applicant for or recipient of medical assistance
 9 under the State plan as a medically needy individual (de-
 10 scribed in section 1902(a)(10)(C) of the Social Security Act)
 11 or as an optional categorically needy individual (described in
 12 section 1902(a)(10)(A)(ii) of such Act).”.

13 **SEC. 10. LIMITATION OF LIABILITY OF MEDICARE BENEFICI-**
 14 **ARIES WITH RESPECT TO SERVICES FUR-**
 15 **NISHED BY EXCLUDED INDIVIDUALS AND**
 16 **ENTITIES.**

17 Title XVIII is amended by adding at the end the follow-
 18 ing new section:

19 **“LIMITATION OF LIABILITY OF BENEFICIARIES WITH RE-**
 20 **SPECT TO SERVICES FURNISHED BY EXCLUDED INDI-**
 21 **VIDUALS AND ENTITIES**

22 **“SEC. 1890. Where an individual eligible for benefits**
 23 **under this title submits a claim for payment for items or serv-**
 24 **ices furnished by an individual or entity excluded from par-**
 25 **ticipation in the programs under this title, pursuant to section**
 26 **1128, 1128A, 1156, 1160 (as in effect on September 2,**

1 1982), 1862(d) (as in effect on the date of the enactment of
 2 the Medicare and Medicaid Patient and Program Protection
 3 Act of 1987), or 1866, and such beneficiary did not know or
 4 have reason to know that such individual or entity was so
 5 excluded, then, to the extent permitted by this title, and not-
 6 withstanding such exclusion, payment shall be made for such
 7 items or services. In each such case the Secretary shall notify
 8 the beneficiary of the exclusion of the individual or entity
 9 furnishing the items or services. Payment shall not be made
 10 for items or services furnished by an excluded individual or
 11 entity to a beneficiary after a reasonable time (as determined
 12 by the Secretary in regulations) after the Secretary has noti-
 13 fied the beneficiary of the exclusion of that individual or
 14 entity.”.

15 **SEC. 11. DEFINITION OF PERSON WITH OWNERSHIP OR**
 16 **CONTROL INTEREST.**

17 Section 1124(a)(3)(A)(ii) (42 U.S.C. 1320a-
 18 3(a)(3)(A)(ii)) is amended by striking “\$25,000 or”.

19 **SEC. 12. CONDITIONAL APPROVAL OF RENAL DIALYSIS**
 20 **FACILITIES.**

21 Section 1881 (42 U.S.C. 1395rr) is amended by adding
 22 at the end the following new subsection:

23 “(h)(1) In any case where the Secretary—

1 “(A) finds that a renal dialysis facility is not in
2 substantial compliance with requirements for such fa-
3 cilities prescribed under subsection (b)(1)(A),

4 “(B) finds that the facility’s deficiencies do not im-
5 mediately jeopardize the health and safety of patients,
6 and

7 “(C) has given the facility a reasonable opportu-
8 nity to correct its deficiencies,
9 the Secretary may, in lieu of terminating approval of the fa-
10 cility, determine that payment under this title shall be made
11 to the facility only for services furnished to individuals who
12 were patients of the facility before the effective date of the
13 notice.

14 “(2) The Secretary’s decision to restrict payments under
15 this subsection shall be made effective only after such notice
16 to the public and to the facility as may be prescribed in regu-
17 lations, and shall remain in effect until (A) the Secretary finds
18 that the facility is in substantial compliance with the require-
19 ments under subsection (b)(1) (A), or (B) the Secretary termi-
20 nates the agreement under this title with the facility.

21 “(3) A facility dissatisfied with a determination by the
22 Secretary under paragraph (1) shall be entitled to a hearing
23 thereon by the Secretary (after reasonable notice) to the same
24 extent as is provided in section 205(b), and to judicial review

1 of the Secretary's final decision after such hearing as is pro-
2 vided in section 205(g).''.

3 **SEC. 13. AMENDMENT RELATING TO FRAUD INVOLVING MEDI-**
4 **CARE SUPPLEMENTAL INSURANCE.**

5 Section 1882(d)(1) (42 U.S.C. 1395ss(d)(1)) is amended
6 by striking "knowingly or willfully" and inserting "knowing-
7 ly and willfully".

8 **SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.**

9 (a) **REGULATIONS.**—The Secretary of Health and
10 Human Services, in consultation with the Attorney General,
11 not later than 1 year after the date of the enactment of this
12 Act shall publish proposed regulations, and not later than 2
13 years after the date of the enactment of this Act shall pro-
14 mulgate final regulations, specifying payment practices that
15 shall not be treated as a criminal offense under section
16 1128B(b) of the Social Security Act and shall not serve as
17 the basis for an exclusion under section 1128(b)(7) of such
18 Act. Any practices specified in regulations pursuant to the
19 preceding sentence shall be in addition to the practices de-
20 scribed in subparagraphs (A) through (C) of section
21 1128B(b)(3).

22 (b) **CRIMINAL VIOLATION.**—Section 1128B(b)(3), as
23 amended and redesignated by section 4 of this Act, is further
24 amended—

1 (1) by striking “and” at the end of subparagraph
2 (B),

3 (2) by striking the period at the end of subpara-
4 graph (C) and inserting “; and”, and

5 (3) by adding at the end thereof the following new
6 subparagraph:

7 “(D) any payment practice specified by the Secre-
8 tary in regulations promulgated pursuant to section
9 15(a) of the Medicare and Medicaid Patient and Pro-
10 gram Protection Act of 1987.”.

11 **SEC. 15. EFFECTIVE DATES.**

12 (a) **IN GENERAL.**—Except as provided in subsections
13 (b), (c), (d), and (e), the amendments made by this Act shall
14 become effective at the end of the fourteen-day period begin-
15 ning on the date of the enactment of this Act and shall not
16 apply to administrative proceedings commenced before the
17 end of such period.

18 (b) **MANDATORY MINIMUM EXCLUSIONS APPLY PRO-**
19 **SPECTIVELY.**—Section 1128(c)(3)(B) of the Social Security
20 Act (as amended by this Act), which requires an exclusion of
21 not less than five years in the case of certain exclusions, shall
22 not apply to exclusions based on convictions occurring before
23 the date of the enactment of this Act.

24 (c) **EFFECTIVE DATE FOR CHANGES IN MEDICAID**
25 **LAW.**—(1) The amendments made by sections 5 and 8(f)

1 apply (except as provided under paragraph (2)) to payments
2 under title XIX of the Social Security Act for calendar quar-
3 ters beginning more than thirty days after the date of the
4 enactment of this Act, without regard to whether or not final
5 regulations to carry out such amendment have been published
6 by such date.

7 (2) In the case of a State plan for medical assistance
8 under title XIX of the Social Security Act which the Secre-
9 tary of Health and Human Services determines requires
10 State legislation (other than legislation appropriating funds)
11 in order for the plan to meet the additional requirements im-
12 posed by the amendments made by this Act, the State plan
13 shall not be regarded as failing to comply with the require-
14 ments of such title solely on the basis of its failure to meet
15 these additional requirements before the first day of the first
16 calendar quarter beginning after the close of the first regular
17 session of the State legislature that begins after the date of
18 the enactment of this Act.

19 (3) Subsection (j) of section 1128A of the Social Securi-
20 ty Act (as added by section 3(f) of this Act) takes effect on
21 the date of the enactment of this Act.

22 (d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii)
23 and (iii) of section 1128A(a)(1)(C) of the Social Security Act,
24 as amended by section 3(a)(1)(F) of this Act, apply to claims
25 presented for services performed on or after the effective date

1 specified in subsection (a), without regard to the date the
2 misrepresentation of fact was made.

3 (e) CLARIFICATION OF MEDICAID MORATORIUM.—

4 The amendments made by section 9 of this Act shall apply as
5 though they were originally included in the enactment of sec-
6 tion 2373(c) of the Deficit Reduction Act of 1984.

7 (f) TREATMENT OF CERTAIN DENIALS OF PAY-
8 MENT.—For purposes of section 1128(b)(8)(B)(iii) of the
9 Social Security Act (as amended by section 2 of this Act), a
10 person shall be considered to have been excluded from par-
11 ticipation under a program under title XVIII if payment to
12 the person has been denied under section 1862(d) of the
13 Social Security Act, as in effect before the effective date
14 specified in subsection (a).

Passed the House of Representatives June 2, 1987.

Attest: DONNALD K. ANDERSON,
Clerk.

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